

## **AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**THIS AGREEMENT** is dated this 27<sup>th</sup> day of September, 2004, and made by and between the **COUNTY OF YORK, VIRGINIA**, or assigns, (hereinafter referred to as "Seller"), and **JUST OF YORK, LLC**, a Virginia limited liability company, (hereinafter referred to as "Purchaser").

### **WITNESSETH:**

**WHEREAS**, Seller is the owner of record and in fee simple of that property consisting of one parcel totaling approximately 1.19 acres located at 311 Redoubt Road, also known as Lot 29 in Victory Industrial Park, in York County, Virginia, and described among the tax map records of said County as Tax Map Number 024 60 29, and more particularly described on the attached Exhibit A, incorporated herein by reference; and

**WHEREAS**, it is the desire of Purchaser to purchase and Seller to sell a portion of Lot 29 consisting of 35,322 square feet more or less, designated as "Lot 29(A)" on the attached Exhibit A, all in accordance with the following terms and conditions:

**NOW THEREFORE**, in consideration of Two Hundred and 00/100 Dollars (\$200.00) paid by certified or cashier's check to Seller, to be held as Deposit in accordance with the terms and conditions of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Seller does hereby agree to grant, bargain, sell and convey unto the Purchaser and Purchaser does hereby agree to purchase the above-described property, together with all rights-of-way, easements, appurtenances and improvements on the property, all mineral, oil, gas, water and other subsurface rights and profits, and all sewer, water, and other utility rights and all right, title and interest of

Seller in and to any roads, streets, and ways, public and/or private, serving and/or adjacent to the land, (collectively hereinafter referred to as the "Property"), all in accordance with the terms of this Agreement.

1. PURCHASE PRICE AND TERMS OF PAYMENT

a. Purchase Price: The purchase price for the Property shall be One Hundred Six Thousand and 00/100 Dollars (\$106,000.00). This shall be a purchase in gross and not by the square foot. The \$200.00 Deposit shall be credited toward the purchase price.

b. Terms of Payment: Purchaser shall pay all cash or its equivalent at closing, of which the above Deposit shall be a part.

2. FEASIBILITY AND ENVIRONMENTAL STUDY PERIOD: The obligations of the Purchaser shall be contingent upon a satisfactory feasibility environmental study and Purchaser shall have forty-five (45) days ("Feasibility Period") from the date of final acceptance of this contract by Seller in which period Purchaser shall have the right to declare this contract null and void and of no further force and effect and the Deposit shall be returned. During the Feasibility Period, Purchaser shall have the right to enter upon the Property for the purpose of making surveys, taking soil samples, taking test borings, and doing all things reasonably necessary to conduct an analysis of the Property, including but not limited to an environmental study. In the event that this Agreement is terminated at the conclusion of the Feasibility Period, Purchaser shall repair, at Purchaser's cost, any damages to the Property as a result of such surveys and studies.

3.     SUBDIVISION: The parties acknowledge and agree that Lot 29 of Victory Industrial Park currently exists as a single, unsubdivided parcel. Prior to settlement, Seller shall, at its own cost and expense, obtain all necessary approvals for a subdivision of Lot 29 into Lots 29(B) and 29(A) as shown on Exhibit A, including approval of the York County subdivision agent of a subdivision plat which shall be recorded at settlement contemporaneously with the deed of conveyance. Purchaser agrees to provide its current survey of Lots 29(A) and 29(B) for Seller's use. Failure of Seller to obtain all necessary subdivision approvals by the settlement date set out in paragraph 9 shall entitle either Purchaser or Seller to declare this Agreement null and void, in which event Seller shall return the Deposit to Purchaser, but no other damages for default. Seller shall use its best efforts to obtain a subdivision of Lot 29 as provided on Exhibit "A".

4.     TITLE: The Property is to be sold free of encumbrances and all real estate taxes are to be current to the date of closing. Title to the subject Property shall be good of record and in fact, marketable, and insurable at regular rates by a reputable title insurance company doing business in the Commonwealth of Virginia. In the event of defects or objections to the title, Seller shall have a reasonable period of time in which to clear the title at Seller's expense. The date for settlement or other action required hereby shall be extended by the amount of time taken by Seller to correct defects. If the items complained of are not corrected by Seller within four (4) months from the date the report of title is delivered to Seller, then this Agreement, at the option of the Purchaser, shall become null and void and the Deposit shall be refunded to Purchaser in full as Purchaser's sole remedy unless Purchaser is nevertheless willing to accept such title as

Seller is able to deliver. It is agreed that Purchaser may require the proceeds of sale to be used at settlement to discharge any monetary encumbrances against the Property.

5. REPRESENTATIONS AND WARRANTIES OF SELLER: Seller represents and warrants to Purchaser as of the date hereof, such representations and warranties to be repeated and true as of the date of settlement:

a. That Seller holds the entire fee simple title to all of the Property (legal and equitable), with full power to convey same in fee simple absolute without the consent of any other party.

b. That there are no threatened or pending condemnation or other proceedings or litigation against or affecting any part of the Property.

c. That there exists vehicular and pedestrian access to and from the Property from Redoubt Road without the necessity of obtaining an easement or other right from any property owner; however, if a road is at any time constructed on Lot 29(B), as designated on Exhibit "A", Purchaser reserves the right to request vehicular access to the Property across such road, Seller's approval of such request to be entirely at Seller's discretion and subject to all applicable ordinances and regulations

d. To the best of Seller's knowledge, the Property has never been used as a landfill, nor has the Property been used for the burying or placement of any hazardous or toxic wastes as such terms may be defined according to applicable regulations of federal, state, or local governmental agencies.

e. Seller represents and warrants to the Purchaser that all bills and claims for labor performed or materials provided to or for the benefit of the Property have

been paid or will be paid in full by the Seller, and that there are no mechanics' liens perfected or noted as affecting the Property. Furthermore, Seller agrees to execute and deliver at settlement such affidavits or indemnities or take such other actions as Purchaser's title insurance company shall reasonably require.

6. POSSESSION: Possession of the Property shall be delivered to the Purchaser at settlement free whatsoever of any tenant or occupant.

7. ADJUSTMENTS: Rents, taxes, including roll-back taxes, if any, interest and the like, if applicable, are to be adjusted to the date and time of settlement. If the closing shall occur before the Property has been assessed for taxation for the current year, or before the tax rate is taxed for the then current year, the apportionment of taxes shall be on the basis of the tax rate for the previous year applied to the latest assessed valuation, with proration to be adjusted between the parties based on the actual taxes for the year of closing at such time as the actual taxes are determined. This provision shall survive closing.

8. CONVEYANCE/COSTS: Seller shall convey the Property to Purchaser by good and valid Special Warranty Deed to be prepared at Seller's expense and Seller shall pay the State Grantor's Tax, if any. The cost of examining and insuring the title, conveyancing, notary fees, and state and county transfer recording taxes and fees, including those for deferred purchase money deed of trust, if any, are to be at the cost of the Purchaser.

9. SETTLEMENT: Settlement and closing of this Agreement is to be held within thirty (30) days following the approval of the subdivision plat in accordance with

paragraph 3 above, but no later than December 31, 2004. Purchaser shall name the settlement agent.

10. DEFAULT:

a. If the sale contemplated by this Agreement is not consummated through default of Seller, Purchaser as Purchaser's sole remedy may terminate this Agreement and demand and receive a refund of the Deposit, or may seek and obtain specific performance of this Agreement, but shall have no other remedies available in law or equity.

b. If the sale contemplated by this Agreement is not consummated through default of Purchaser, Seller may as its sole remedy retain the Deposit as fixed and liquidated damages.

11. RISK OF LOSS: The risk of loss or damage to the Property by fire or other casualty until recordation of the deed of conveyance is assumed by Seller.

12. EMINENT DOMAIN: If the Property, or any portion thereof, prior to closing, shall be condemned or taken by any authority or agency having the power of eminent domain, Purchaser shall have the absolute right at its option, to terminate this Agreement by written notice to Seller, given by Purchaser within thirty (30) days after receipt by Purchaser of notice of condemnation or taking, in which event the Deposit shall be returned in full to the Purchaser and thereafter both Seller and Purchaser shall be relieved of further liability under this agreement, at law or in equity. In the alternative, Purchaser may, however, elect to make settlement as to such remaining portion of the property in accordance with the procedure set out below. In the event of any eminent

domain proceedings finalized prior to closing, the condemnation award shall be distributed first to Seller, to a maximum of the purchase price set out in this Agreement, with the balance to be distributed to the Purchaser. At settlement, the purchase price shall be reduced by an amount equal to the condemnation award paid to Seller. If Purchaser shall elect to proceed to settlement and the portion of the Property to be condemned has not yet been taken and paid for by the condemning authority by the time of settlement, then there shall be no abatement in the purchase price and Seller shall assign to Purchaser at the time of settlement all of Seller's right to any unpaid condemnation awards, and Seller shall convey the entire Property to Purchaser. Seller shall not adjust or settle any condemnation awards whatsoever without the prior written approval of Purchaser; further, Purchaser and its counsel shall have the right (including prior to the date of settlement) to participate in all negotiations relating to condemnation awards upon giving written notice of such intent to Seller, and in the event that any litigation arises as a result of any condemnation proceedings, Purchaser may participate in and direct the course of any such litigation, at Purchaser's expense. In no event, however, shall the date for closing be changed or extended due to any such proceedings or actions without the written consent of both parties.

13. NOTICE: Whenever notice is required or desired to be given, said notice shall be deemed to have been duly given when mailed by registered or certified mail, return receipt requested, addressed to the respective parties, as follows:

IF TO PURCHASER:      The Board of Supervisors of York County, Virginia  
                                 c/o James O. McReynolds, County Administrator  
                                 P.O. Box 532  
                                 Yorktown, VA 23690

With copies to: James E. Barnett, County Attorney  
P.O. Box 532  
Yorktown, VA 23690

IF TO SELLER:

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With copies to: Philip L. Hatchett  
Kaufman & Canoles  
11817 Canon Boulevard, Suite 408  
Newport News, VA 23606

Said addresses may be changed by providing notice of such change in accordance with this paragraph.

14. REAL ESTATE COMMISSION: Seller and Purchaser do hereby acknowledge that there is no real estate agent or real estate broker responsible for bringing about this transaction; and in any event, the Seller and Purchaser each agree to pay for any and all real estate commission for which each may be liable and to further indemnify and hold harmless each to the other from any claim for such commission or damage as a result of such claim, including reasonable attorney's fees charged to defendant such claim.

15. CONTINGENCY FOR APPROVALS BY BOARD OF SUPERVISORS:  
Seller's obligations hereunder are expressly made contingent upon approval of this transaction following the holding of a public hearing pursuant to Code of Virginia § 15.2-1800 et. seq. Seller shall schedule such a public hearing at the earliest convenient opportunity following execution of the agreement by both parties.



16. PARTIES: All references herein to parties are in the masculine gender, and are intended to include the feminine gender, the neutral gender, and plurals, as the case may appear from context.

17. BINDING EFFECT: This Agreement and all of the terms, conditions and obligations hereunder shall inure to the benefit or obligation, as the case may be, and shall be binding upon the parties and their respective personal representatives, heirs, successors and assigns.

18. SEVERABILITY: ' In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof.

19. APPLICABLE LAW: This Agreement and all questions of construction of the provisions hereof and of the rights and liabilities of the parties hereunder shall be construed and determined in accordance with the applicable laws of the Commonwealth of Virginia.

20. COUNTERPARTS: This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

21. AMENDMENTS: This Agreement constitutes the entire agreement between the parties, shall replace and supersede all prior agreements between the parties, whether written or oral, and may be amended only a written agreement signed by all of the parties and the terms and conditions set forth herein shall survive the passing of title.